

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Antonio Lamont Boykin, #332153,	)	C/A No. 5:13-cv-2323-MGL-KDW
	)	
	)	
Petitioner,	)	
	)	
v.	)	Order
	)	
Joseph McFadden,	)	
	)	
Respondent.	)	
	)	
	)	

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Petitioner Antonio Lamont Boykin is a state prisoner who brought this habeas action pursuant to 28 U.S.C. § 2254. This matter is before the court on Petitioner’s Motion to Alter or Amend Judgment which the court construes as a Motion to Reconsider. Petitioner asks the court to reconsider its Order, dated April 23, 2014, denying Petitioner’s Motion to Amend/Correct Petition for Writ of Habeas Corpus, ECF No. 27. Defendant filed a Response to this Motion on May 19, 2014, ECF No. 35, and Petitioner replied on May 30, 2014. ECF No. 36.

Petitioner asks that the court reconsider its Order and allow him to amend his pleading as a matter of course under Rule 15(a)(1) of the Federal Rules of Civil Procedure because he requested the amendment within twenty-one days after the Respondent filed his Return. ECF No. 34 at 1-2. Plaintiff argues that because he filed his Motion to Amend, ECF No. 27, twelve days after Respondent filed its Return, “Petitioner was well within the 21 days time period to file an amended pleading.” *Id.* at 2. Respondent objected and argued that “Petitioner neither sought to amend his pleading ‘once as a matter of course’ citing either Rule 15(a)(1)(A) or (B), nor did he merely file an amendment within the twenty-one (21) day timeframe.” ECF No. 35 at 1. Rather, Respondent maintains that Petitioner first sought *leave* to amend his pleadings in his Motion to

Reconsider and thus Petitioner's request is not timely or proper. *Id.* at 1-2. Second, Respondent maintains that a summary judgment motion is not considered a pleading, therefore Rule 15(a)(1)(B) is not applicable. *Id.* at 2. Finally, Respondent maintains that Petitioner's Motion is futile because any perceived error "is of no moment as Petitioner could not receive relief on claims that are not cognizable and/or defaulted." *Id.* In his Reply, Petitioner only addressed Respondent's futility argument. ECF No. 36.

The court has reviewed Petitioner's arguments in support of his Motion to Reconsider and finds that these arguments do not warrant any adjustment to the court's prior ruling. Petitioner's Motion, ECF No. 34, is hereby denied for reasons set forth in the court's prior ruling, ECF No. 32.

IT IS SO ORDERED.

June 6, 2014  
Florence, South Carolina

A handwritten signature in black ink, reading "Kaymani D. West". The signature is fluid and cursive, with the first name "Kaymani" being more prominent and the last name "West" following in a similar style.

Kaymani D. West  
United States Magistrate Judge